

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 75 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHAMPAKLAL BHUKHANDAS

Versus

SURAT MUNICIPAL CORPORATION

Appearance:

MR DHIRENDRA MEHTA for Petitioners
MR PRASHANT G DESAI for Respondent No. 1

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 16/01/97

ORAL JUDGEMENT

Rule. The petitioner seeks permission to delete respondent no.3. Permission is granted.

Heard the learned Advocates. Perused the papers. It is true that the respondents have to recover a large amount by way of tax arrears. It is also true that for recovery of tax arrears distress proceedings are

available. At the same time while taking recourse of such measures the occupant who is primarily liable for the tax arrears be not put to unnecessary harassment and hardship. In cases where there are large amount of tax arrears, it is open for the Corporation to attach and sell immoveable property but if the property is in occupation of tenant, no law says that before attaching or putting to auction the property should be sealed so as to cause greater hardship to the occupant tenant. One fails to understand as to under what circumstances the property in question has been sealed though the evidence shows that the property has already been attached and a notification for auction thereof has already been published way back in October, 1996.

Since other alternative and effective methods of recovery of tax arrears are available to the Corporation-respondents, in my view, in sealing the premises, the Corporation appears to have exceeded jurisdiction. Consequently, to that extent, I find justification in the contentions raised by the petitioner and the application deserves to be allowed to that extent. At the same time, the occupier cannot escape liability of payment of tax arrears on behalf of the landlord as under law also the Corporation can recover tax from the occupier. Hence, in the peculiar facts and circumstances of this case, the respondents are directed to break-open seal put on the suit premises and allow the applicants to use the suit premises for their business. However, the attachment of the suit property will continue and it will be open for the respondents to sell the same in accordance with law. The petitioner is directed to pay the sum of Rs.30,000/- to the respondent-Corporation and the same shall be treated as deposited towards tax arrears till the property is sold and disposed of. In the event the sale proceeds exceed the amount of tax arrears, then the amount so paid by the petitioner shall be refunded. The petitioner shall pay the aforesaid amount on or before 31st January, 1997. It is hereby made clear that the seal shall be removed on or before 21st January, 1997. However, if the petitioner fails to pay the amount within the stipulated period, it shall be open for the respondent to move this Court for appropriate relief. Civil Revision Application stands disposed of accordingly. Direct service is permitted.

Before parting with this order, I make it clear that the observations are made keeping in mind the facts and circumstances of this case. By aforesaid observations, I do not want to convey that Corporation

does not have powers to seal premises in given case. It would always depend upon facts of individual case.

sf-rrj